Agenda Date: 2/1/06
Agenda Item: 2C

STATE OF NEW JERSEY

Board of Public Utilities
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ENERGY

I/M/O THE PETITION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR APPROVAL OF CHANGES IN ELECTRIC RATES, FOR CHANGES IN THE TARIFF FOR ELECTRIC SERVICE, B.P.U.N.J. NO. 14 ELECTRIC PURSUANT TO N.J.S.A. 48:2-21 AND N.J.S.A. 48:2-21.1, FOR CHANGES IN ITS ELECTRIC DEPRECIATION RATES PURSUANT TO N.J.S.A. 48:2-18, AND FOR OTHER RELIEF	ORDER BPU DOCKET NO. ER02050303 OAL DOCKET NO. PUC 5744-02

(SERVICE LIST ATTACHED)

BY THE BOARD:

On April 22, 2004, the Board of Public Utilities ("Board") issued an Order resolving the above-captioned Public Service Electric and Gas Company ("PSE&G" or "the Company") rate proceeding ("Final Order"). As part of the Final Order, the Board directed that a $155 million excess depreciation reserve related to the provision of electric service be amortized over 29 months beginning on August 1, 2003, as a kilowatt-hour ("kWh") credit of $0.001565 per kWh applicable to all kWh to which the Transition Bond Charge is applied. The Board concluded that a 29-month amortization of the excess depreciation reserve would ensure an expeditious and timely return to ratepayers of this excess.[1] The credit totaled approximately $64 million annually.

In establishing the 29 month credit, the Board found "unacceptable that . . . upon the expiration of the proposed bill credit associated with the amortization of the $155 million excess depreciation reserve, the Company [would] receive an automatic increase to its electric rates effective January 1, 2006, without the need for any further action by the Company or review by the Board." Final Order at 26. Accordingly, the Board required the Company to make a filing

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[1] Commissioner Connie O. Hughes joined with the Board in resolution of these matters, but dissented from the determination to amortize the $155 million excess depreciation reserve over a 29-month period.

that would allow the Board to "review its financial condition prior to January 1, 2006, to consider the $64.2 million of proposed additional rate increase associated with the expiration of the amortization of the $155 million excess depreciation reserve." Ibid. The review was to include, but not be limited to, the examination of the Company's earnings, credit quality, and other indicators of overall financial integrity and was to be subject to full participation of the parties to this proceeding and final determination by the Board. Additionally, the Board ordered PSE&G's filing to include, at a minimum, the following specific areas of financial review for the calendar years 1999 through 2004 and for the 12 months ended September 30, 2005, unless otherwise noted:

a) the utility's capital structure and embedded costs at year or period end;

b) debt financings made during the year or 12-month period (including the issuance of transition bonds), indicating the principal amount issued, the term of the issue, coupon rate, issuance expenses and call and other significant provisions, if any;

c) the balance of short-term debt outstanding at year or period end and the average interest rate paid during the year;

d) bond interest coverage ratios and other metrics on which the bond rating agencies' ratings are based (the ratio of fixed funds from operations (FFO) to total debt, FFO interest coverage, pre-tax interest coverage and the ratio of total debt to total capital);

e) common equity issuances by the parent company, if any, indicating the shares sold, the price received and issuance expenses;

f) preferred equity issuances by the utility, if any, indicating the shares sold, the price received and issuance expenses;

g) capital contributions from and dividends paid to the parent company;

h) the achieved overall rate of return and rate of return on the utility's beginning and end average book common equity;

i) the utility's bond and other debt ratings assigned by the three major rating agencies (Moody's, Standard and Poors and Fitch) and copies of the related utility credit reports, as well as investment recommendations made for the parent company during the period;

j) capital expenditures on utility distribution plant;

k) with the exception of the rating agency reports, projections of the preceding information (a) – (j) are also to be provided for the forecast years 2006 through 2008;

l) for the 12 months ended September 30, 2005, employing all actual data, statements of rate base and utility operating income, both with and without the $64.2 million base rate increase associated with the amortization of the excess depreciation reserve, accompanied by an explanation and derivation of all adjustments;

m) on the same test year basis as (l), the utility's interest coverage ratios and other metrics on which the rating agencies' bond ratings are based, as well as the utility's overall rate of return and rate of return on common equity, with and without the $64.2 million increase; and

n) schedules showing the transmission investment, revenue and operating expenses eliminated in (l) in determining the distribution rate base and operating income, as well as a narrative explaining the basis for the transmission/distribution allocation.

[Final Order at 27]

The Final Order directed PSE&G to make the financial review filing with the Board by November 15, 2005, and provide copies to all the parties in this docket, so that this issue could be examined prior to the expiration of the 29-month credit term,.

In accordance with the Final Order, on November 10, 2005, PSE&G filed a request to discontinue the 29 month credit effective January 1, 2006. The Company's filing included the information described above. Subsequently, the parties convened a telephone status conference for purposes of establishing a schedule for review of the Company's filing. Representatives from PSE&G, the Staff of the Board of Public Utilities ("Board Staff"), the Division of the Ratepayer Advocate ("RPA"), New Jersey Large Energy Users Coalition ("NJLEUC") and Gerdau Ameristeel Corporation ("Gerdau") participated in the status conference. The parties agreed to a schedule whereby a brief discovery period was established. PSE&G was afforded the opportunity to file initial comments on its financial review filing on November 30, 2005. All of the other parties were permitted to file reply comments by December 15, 2005. PSE&G reserved the opportunity to file supplemental comments subsequent to the submission of reply comments by the other parties. Additionally, the parties held a discovery conference on December 6, 2005 to assist in expediting the review of this matter.

Public hearings were held on December 29, 2005 in Hackensack, New Jersey (Alexander C. Stern, Esq., Legal Specialist, presiding) and New Brunswick, New Jersey (Bethany Roque-Romaine, Esq., Legal Specialist, presiding) to obtain public comment on the Company's filing. The public hearings were preceded by notices in newspapers of general circulation throughout the Company's electric service territory. No members of the public appeared to provide comments relating to PSE&G's request.

POSITIONS OF THE PARTIES

1 RPA

Based on its review of the financial information filed in this review, the RPA argues that PSE&G is earning a return well in excess of its allowed rate of return for the year-end September 30, 2005 test year and calendar year-end 2005 (9+3) test year, and would still earn well in excess of its allowed return even if the customer credit for the excess depreciation reserve amortization were to continue. It asserts that although PSE&G proffers projected financial data which alleges a significant decrease in electric distribution net income for 2006 through 2008, the projections are "fraught with inconsistencies, unsupported by convincingly reliable data, and should not be relied upon for return on equity determinations." (RPA Comments at 5-6). The RPA submits that the Board should not eliminate the customer credit. Instead, the Board should increase the customer credit to reflect the Company's overearnings level. According to the RPA, even after reflecting the continuation of the $64.2 million customer credit, PSE&G would still be overearning by $38.7 million. Therefore, the RPA contends that the Board should order, for the benefit of PSE&G's ratepayers, the implementation of an additional credit of $38.7 million to capture the amount by which the Company is over-earning. This would result in a customer credit of $102.9 million which the RPA recommends be effective immediately and until the resolution of PSE&G's next electric base rate case.

2. NJLEUC

NJLEUC makes three corrections to PSE&G's filing. First, it contends that the distribution operating income for the twelve months ended September 30, 2005 is shown incorrectly by the Company as $349 million on Item L because the Company failed to recognize any deduction for interest in its calculation of income tax expense. According to NJLEUC, correcting the calculation of income tax expense adds $38 million in revenues to electric distribution operating income for the twelve months ended September 30, 2005. NJLEUC asserts that the Company appears to agree that this correction is appropriate in its response to discovery request RAR-49.

Second, NJLEUC argues that the Company's calculation of ROE should not have included an adjustment for normal weather. It contends that the Final Order at 27 directed the filing to include only actual data and there was no provision for weather normalization or any other ratemaking adjustments. As further support for this position, NJLEUC references PSE&G's responses to various discovery in this matter in which the Company specifically stated that it had not been ordered by the Board to provide base rate case adjustments to operating income. NJLEUC asserts that just as the Company has only utilized actual data in all other respects, a weather normalization adjustment is no more or less improper than any other base rate case adjustment.

NJLEUC also challenges the Company's use of a year end rate base rather than an average rate base. It contends that, when calculating the earned return, it is appropriate to use the average rate base (or average common equity balance) so that the income earned over the relevant twelve month period is properly matched to the investment producing that income. It asserts that based on the response to RAR-26, the average rate base for the twelve months ended September 30, 2005 was $3,120 million, as compared to the year end rate base of $3,142 million used by the Company in its analysis.

NJLEUC concludes by indicating that: (1) correcting the Company's' income tax calculation; (2) eliminating the weather normalization adjustment; and (3) calculating the return on average common equity, yields a return on equity ("ROE") of 11.0%, assuming that the bill credit continues after the 29-month amortization of the excess depreciation reserve is complete. It asserts that pursuant to the Final Order this review was intended to assess the extent to which a rate increase (in the form of expiration of the bill credit) was necessary to preserve the Company's financial integrity and allow it a fair opportunity to earn a reasonable rate of return. PSE&G's presently authorized ROE is 9.75% pursuant to the Final Order. With the continuation of the bill credit, PSE&G would exceed this ROE. NJLEUC therefore argues that an increase in distribution rates is not justified.

3. PSE&G

In lieu of the submission of formal comments and/or testimony supporting the financial information it submitted in this filing, the Company chose to rely upon its response to RPA discovery request RAR-46 to justify elimination of the excess depreciation reserve credit. It alleges that the Final Order required that the Company supply documentation demonstrating that the elimination of the credit would not lead to excessive earnings and the information submitted meets this burden. Specifically, PSE&G references Item H – Forecast 2006-2008 and indicates that although it will earn "slightly in excess of 10% on equity if the credit is eliminated," as opposed to the 9.75% ROE authorized by the Final Order, this is not excessive. Moreover, it alleges that Company projections show the ROE significantly decreasing to less than 8% if the credit is continued. PSE&G also contends that the ROE achieved for the twelve months ended September 30, 2005, adjusted for normal weather and the revenue credit is not excessive.

Although the Company did not explain or provide any concrete support for its projection of a significant decrease in its return should the credit remain in place, it concluded that the filed information establishes that the Company will not be earning excessively. Therefore, PSE&G argues that the Board should authorize elimination of the credit effective on December 31, 2005.

In reply comments, PSE&G continues to rely on its 2006-2008 financial forecasts, but did not submit any further information explaining the forecasts and, instead argues as follows:

> The forecast data shown for 2006-2008 is based on the Company's business plan which is used to operate the business and which is developed on a bottom's-up basis for each forecast year. We do not merely adjust prior periods actual results and present that as our current plan. All of the forecast financial information provided in response to the Board's financial review requirements was based on this comprehensive business plan. Income statements, balance sheets, capital structures, detailed cost of debt, were all based on this plan. If the Advocate needed more information on an area they should have requested it.
>
> . . . If the Advocate had requested an explanation of the earnings change between 2005 and 2006 we would have indicated that earnings for the 12-months ended September 30, 2005 and projected for calendar year 2005 are not indicative of what is reasonable to expect for 2006. Actual weather in 2005 contributed over $11 million to earnings performance when compared to normal weather conditions. With the run up in energy costs, sales growth in 2006 is expected to be minimal and margins decrease. In addition, expenses in 2006 rise due to expected increases in labor costs, fringe benefit costs, tree trimming expenditures (expenditures in 2005 were less than expected due to the lack of available contractor tree trimming crews which have been deployed in response to Katrina) and higher interest rates.
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> [PSE&G Reply Comments at 5].

DISCUSSION AND FINDINGS

At the outset, it must be recognized that this supplemental proceeding was intended to provide the Board with sufficient information to assess the financial condition and overall financial integrity of the Company prior to rendering a decision on the necessity to increase rates above the rates set in the Final Order. As previously indicated, the Final Order held that an automatic rate increase on January 1, 2006, resulting from the expiration of the 29 month excess depreciation reserve bill credit without further review of the overall financial integrity of PSE&G and consideration of whether the Company's operating results justified a further rate increase was unacceptable.

It is well established that the Board has broad discretion in the exercise of its authority to determine what, in a particular situation, is a just and reasonable return for a public utility. However, this determination must be supported by record evidence and should appropriately balance the competing utility and ratepayer interests.

If the Board grants PSE&G's request, the elimination of the credit would increase the delivery portion of rates by $11.52 or 3% annually ($0.96 per month) for a customer using 6,960 kWhs per year. This would result in an increase in the overall total bill of approximately 1.3% from $72.82 to $73.78 per month.

From the information presented by the parties, there appears to be a reasonable level of consensus on certain of the core issues connected with the evaluation of this matter. First, it is undisputed that the Company's actual financial data for the twelve-month period ending September 30, 2005 shows that the Company earned an ROE of 12.9%, which is well in excess of the 9.75% authorized by the Final Order. See, RAR-49. Moreover, it is also undisputed that excluding revenues related to the excess reserve credit, PSE&G's ROE would still be solidly above the Board authorized 9.75% utilizing year-end September 30, 2005, test year data and calendar year-end 2005 data. Ibid.

PSE&G's primary argument in support of its request to increase rates in line with the expiration of the amortization of the excess depreciation reserve is its forecast data for the years 2006 through 2008. PSE&G alleges that its ROE, excluding revenues related to the excess reserve credit, would fall from 12.9% to below 8% in 2006 and remain below the Board authorized 9.75% ROE for the years 2007 and 2008 if the credit remains in place. Assuming the elimination of the credit, the Company forecasts a reduction in electric distribution net income for 2006 of $43 million compared to the actual twelve month period ending September 30, 2005.

It is axiomatic that a public utility must bear the burden of proof with respect to all elements of its expenses which it seeks to pass through in rates to its customers. In re Public Service Electric and Gas Co. 304 N.J.Super. 247 (App. Div, 1997) , certif. den., 152 N.J. 12 (1998); Public Service Coordinated Transport v. State, 5 N.J. 196 (1950). The Board cannot authorize a rate increase based purely on estimates of conditions which may or may not exist as far as three years into the future. In addition to deviating from the Board's well established practice of setting rates based on actual data and only allowing certain out-of-test-period adjustments which are "known and measurable" and satisfy specific criteria, the RPA correctly points out that no evidence has been presented that in any way explains or justifies the projected dramatic decline in PSE&G's electric distribution rate of return absent the relief requested.

No witness has been proffered by the Company in support of its projections or to sponsor in any way the forecasted data. In fact, as also pointed out by the RPA, the Company's projected average annual capital expenditures for 2006-2008 are below the range of capital expenditures in recent years. (RPA Comments at 13). Therefore, there does not appear to be significant capital projects anticipated that might negatively impact PSE&G's return and explain the decline in the Company's projected 2006 ROE, which amounts to 364 basis points, from the actual test year end September 30, 2005 ROE of 11.51% to 7.87% (with continuation of the customer credit). Moreover, although the Company's unsupported forecasts project a dramatic decline in electric distribution revenues should the credit remain in place, the Company forecasts an overall increase to net income related to its other utility assets in 2006.

The Board's analysis must also take into consideration PSE&G's joint filing with Exelon Corporation which the Board will decide subsequent to the evidentiary hearings currently being held before the Office of Administrative Law ("OAL"). In the Matter of the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control of Public Service Electric and Gas Company, and Related Authorizations, BPU Docket No. EM05020106, OAL Docket No. PUC-1874-05. When the Board issued the Final Order, it was unaware and did not contemplate that PSE&G would be filing a request for a change in control seeking to merge with Exelon Corporation to form the nation's largest utility. The financial data filed by the Company in this docket assumes that PSE&G remains a stand-alone Company. Hearings on the merger application are ongoing at the Office of Administrative Law. It is not possible at this time to know the impact of the outcome of the merger proceeding on future earnings.

It is clear and undisputed that the actual data demonstrates that the Company's earnings have not fallen below the Board approved ROE of 9.75% during 2004 and for the twelve months ended September 30, 2005. Moreover, as previously discussed, the Company has not adequately substantiated or explained its projected decline in future earnings.

Given the unpredictability of future earnings, especially in light of the pending merger request, the Board HEREBY FINDS insufficient information has been presented to enable the Board to complete its financial review and assess the financial condition and overall financial integrity of the Company. Thus, the Board is unable to render a final determination with respect to the necessity to increase rates above the rates set in the Final Order. Since the actual data indicates that the Company is clearly achieving an ROE in excess of the Board authorized 9.75% even assuming continuation of the bill credit, the Board FURTHER FINDS no justification at this time for removal of the bill credit and HEREBY ORDERS the bill credit to be continued and rates to remain unchanged.

With respect to the RPA's request for the bill credit to be increased, the Board does not believe it to be appropriate at this time to completely discount the Company's forecasts and, more importantly, the comprehensive proceeding which resulted in the Board's Final Order authorizing existing rates. Instead, should the Company wish to do so, the Board HEREBY DIRECTS that PSE&G be permitted the opportunity to file actual data for the quarter and for the 12 month period ended March 31, 2006 by no later than June 15, 2006. If the Company decides to make this filing, the filing must include complete explanations of any actual drop in earnings so that the Board may sufficiently assess the financial condition and overall financial integrity of the Company before rendering a final financial review determination.

During the intervening period and throughout the pendency of this review, the Board FURTHER ORDERS that ratepayers continue to receive the bill credit. Should PSE&G decide to file the supplemental data discussed above, the Board will evaluate the need for the bill credit on a going forward basis from the time of the Board's Order concluding this review.

DATED: 2/7/06

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I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities

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